

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of VALENCIA WATER COMPANY (U-342-W), a Corporation, for an Order Authorizing It to Increase General Rates Charged for Water Service in Order to Realize Increased Annual Revenues of \$2,496,685 in Test Year 2003, \$143,286 in Test Year 2004, and \$43,439 in Attrition Year 2005, to Apply a Surcharge Calculated to Generate a Further \$614,737 in Year 2003 Revenues, to Establish a Low Income Ratepayer Assistance Program, and to Make Further Changes and Additions to Its Tariff for Water Service.

Application 02-05-013
(Filed May 3, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION**

Summary

This ruling finds the Angeles Chapter of the Sierra Club (Sierra Club) eligible to claim intervenor compensation pursuant to Public Utilities Code Sections 1801 to 1812.¹

Background

On May 3, 2002, the Valencia Water Company (Valencia) filed an application seeking Commission authorization to increase its revenues by 21.59% for Test Year 2003, .80% for Test Year 2004, and .24% for Attrition Year 2005. A

¹ All statutory references are to the Public Utilities Code.

prehearing conference (PHC) was held on July 9, 2002. Subsequently, on July 31, 2002, Sierra Club filed a Notice of Intent (NOI) to seek intervenor compensation for participation in this proceeding pursuant to §§ 1801 to 1812 and Rule 76.71 of the Commission's Rules of Practice and Procedure.

Timeliness

Section 1804(a)(1) provides that an NOI must be filed and served within 30 days after the PHC, unless no PHC is held or the proceeding is expected to be completed in less than 30 days. This NOI was filed on July 31, 2002. The PHC was held on July 9, 2002. The NOI is therefore timely.

Eligibility

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a "customer" and that participation without compensation would pose a significant financial hardship.

A. Definition of Customer

Section 1802(b) defines the term "customer" as:

any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...

The Commission requires a participant to explain how it meets the definition of customer and, if it is a group or organization, that it should provide a copy of its articles or bylaws, noting where in the document the authorization to represent the interest of residential ratepayers can be found. Further, a group or organization should indicate what percentage of its membership consists of

residential ratepayers. (See Decision (D.) 98-04-059, *mimeo.* pp. 83 and 88.) The Commission has stated that if the current articles or bylaws have already been filed, the group or organization need only make a specific reference to such filing.

Sierra Club is a non-profit, volunteer organization that has a history of representing the interests of residential and small commercial customers of California's utility companies before this Commission. Sierra Club's articles of incorporation specifically authorize the representation of the public interest, and many members of Sierra Club reside in the service area of Valencia. Therefore, pursuant to § 1802(b), Sierra Club contends that it is a "customer" as that term is used in the intervenor compensation statutes.

Sierra Club is reminded that it should file a copy of its articles or bylaws in this proceeding, if it has not already done so in another proceeding. Sierra Club should address this matter before it submits any request for compensation.

B. Significant Financial Hardship

The second eligibility requirement is significant financial hardship, and with respect to a group or organization, § 1802(g) defines the term to mean: "... the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding."

Under § 1804(a)(2)(B), this showing may be made in the NOI, or alternatively, deferred until the request for compensation is filed. Pursuant to § 1804 (b)(1), a finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding.

Sierra Club states that it is a volunteer organization. Individual groups and chapters must seek funding for issues brought within their respective areas. Administrative hearings and other proceedings are pursued to the extent possible with all volunteers due to funding limitations. Accordingly, Sierra Club contends that economic interest of the individual members is small in comparison to the cost of effective participation in the proceeding.

Nature of Participation

Section 1804(2)(A) provides that the NOI shall include both a statement of the nature and extent of a customer's planned participation and an itemized estimate of the compensation that the customer expects to request.

The Sierra Club states that it expects to be an active party in this proceeding, consistent with the role it has taken over the last two years to monitor annexations and water availability for projects in the Valencia Service Area. According to Sierra Club, use of professional legal counsel for this proceeding will ensure that its participation is timely and will help avoid any delays due to confusion over legal requirements. Sierra Club anticipates serving data requests, preparing and serving testimony, conducting cross-examination during the course of the evidentiary hearing (EH) and submitting briefs and comments as required.

The Sierra Club currently estimates that its attorney will devote approximately 40 hours of preparation and 30 hours to the EH (at a proposed hourly rate of \$250/hour). The Sierra Club also anticipates hiring an expert witness to present testimony measuring an estimated 50 hours of work at \$150 per hour. Expenses of the attorney and witnesses are estimated to be approximately \$2,500. Sierra Club estimates a total budget of \$27,500 for this case.

Work Eligible for Compensation

On August 12, 2002, Valencia filed its response to Sierra Club's NOI. Valencia requested that Sierra Club be "placed on notice that Valencia's ratepayers will not be required to bear any costs of [Sierra Club's] participation beyond the scope of the rate case proceeding."

On August 22, 2002, Sierra Club submitted its "rebuttal"² to Valencia's response. Sierra Club stated that, with its NOI, it seeks only a finding that it is eligible for compensation and that any evaluation of the extent to which compensation should be awarded should properly await the completion of the case and the filing of a request for compensation.

Sierra Club's NOI raises no apparent issue of unrealistic expectations of compensation. In fact, Sierra Club states, quoting § 1804(b)(2), that "a finding of eligibility in no way ensures compensation." Sierra Club is apparently familiar with the provisions of the Intervenor Compensation statutes, §§ 1801 to 1812. The Commission will apply the requirements of these statutes, as well as the Commission's decisions and rules interpreting them, to any request for compensation file by Sierra Club.

IT IS RULED that:

1. Angeles Chapter of the Sierra Club (Sierra Club) submitted a timely notice of intent to claim compensation.
2. Sierra Club is a customer as defined by § 1802(b).

² Such a document is not provided for in the Commission's Rules of Practice and Procedure nor the Public Utilities Code. I will nevertheless accept it for filing as it will assist in resolving this matter.

3. Sierra Club has fulfilled the requirements of § 1804 (a)(2)(a) by providing a statement of the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.

4. Subject to filing a copy of its articles or bylaws within 30 days of the date of this ruling, Sierra Club is eligible to file a claim for intervenor compensation in this proceeding.

5. This preliminary ruling in no way ensures compensation.

6. Any request for compensation filed by Sierra Club will be evaluated pursuant to applicable statutes, decisions, and rules.

Dated August 28, 2002, at San Francisco, California.

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Notice of Intent to Claim Intervenor Compensation on all parties of record in this proceeding or their attorneys of record.

Dated August 28, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

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A.02-05-013 MAB/eap